

APPEAL TO REGIONAL FORESTER
WHITE RIVER NATIONAL FOREST
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

In the Matter of the March 17, 2011 Decision of Forest Supervisor Scott G. Fitzwilliams
Of the White River National Forest

Regarding the White River National Forest Travel Management Plan Record of Decision

NOTICE OF APPEAL
PURSUANT TO 36 CFR PART 219.35, APPENDIX A
BY THE TOWN OF AVON, COLORADO

I. Introduction

The Town of Avon (TOA), a Home Rule Municipality in Eagle County, Colorado respectfully appeals the March 17, 2011 Record of Decision (ROD) signed by White River National Forest Supervisor Scott G. Fitzwilliams, pursuant to 36 CFR Part 219.35. The TOA would like to acknowledge, and are greatly appreciative of, the Forest Service's efforts to develop a comprehensive White River National Forest (WRNF) Travel Management Plan (TMP) to balance the extremely diverse interests of the public with critical environment concerns. However, we appeal the decision due to reasons we feel were either overlooked or not addressed in the Final Environmental Impact Statement (FEIS) and corresponding ROD.

II. Argument

Failure to Respond to Draft Environment Impact Statement (DEIS) Comment and Inadequate Range of Alternatives for USFS Route #7-779.1

On October 24, 2006 TOA submitted detailed comments based on open house and public input meetings on August 8, 2006 and October 24, 2006, to the United State Forest Service (USFS) regarding the agency's then Draft WRNF TMP. That comment letter addresses specific trail designations and alternatives organized under the following areas: (1) Route Number, (2) Specific Comments on Draft WRNF TMP, and (3) Suggestions for the Proposed Alternatives (if applicable).

With the agency's release of the FEIS, most of our comments were noted, addressed and analyzed. However, while the organizational structure of the FEIS made it difficult to determine whether specific public comments were addressed, we determined that one of the most valued routes to the citizens of TOA was not addressed by the agency. No range of alternatives for this trail was contemplated. Below is the specific comment from the TOA's Draft WRNF TMP resolution (Resolution #06-41) signed by the Mayor of the TOA that was overlooked by the agency:

The TOA values the continued mixed use for Metcalf Creek Road (#7-779.1), and opposes the decommissioning of said route proposed in Alternative E.

Nowhere in the FEIS is there any indication that the USFS internalized and analyzed the comment on Route #7-779.1 to explore other mechanized or non-motorized use. Based on review of the "Response to Comments" from the WRNF TMP, Supplemental Draft EIS, dated March 17, 2011, the comment was addressed by the agency with the following:

"Alternative G proposes to close and decommission this road. At the current time there are three roads (Berry Creek, June Creek, and Metcalf Creek) less than two miles apart that access the same road system on Red & White Mountain. Both the Berry Creek and Metcalf Creek roads are proposed for decommissioning as they are unsustainable. The Metcalf Creek Road is very steep and when wet is nearly impassible. As a result, the road is several lanes wide in several spots from the public driving in the grass when the road surface is wet. Near the top, the road is so narrow that it is almost impossible to navigate in a full-size vehicle. In the past, the Forest Service has received complaints from Wildridge homeowners over mud-flows coming down the road and heavy rains and the sediment being deposited in

their yards. Therefore the final alternative will not be modified to no [sic] decommission this” WRNF TMP, Supplemental Draft EIS, March 17, 2011, at Eagle/Holy Cross-12.

It would appear that the primary reason for decommissioning #7-779.1 is due to sustainability concerns, ecological concerns voiced from Wildridge neighbors with regards to mud-flows into the adjacent public street, and proximity to other routes. There is no indication as to the recreational value of this route, or the fact that it is the only legal USFS road between Avon and Vail to the east.

TOA finds the reported complaint(s) voiced by Wildridge neighbors, which partially formed the basis for decommissioning #7-779.1, out of the scope of review by the USFS due to the fact that the intermittent drainage and debris flow issues stem from TOA owned and managed property. The non-paved road accessing #7-779.1, to which the undocumented complaint(s) partially formed the basis for the decommissioning of #7-779.1 is out of the scope of USFS review due to these erosion issues stemming from non-USFS land.

When designating motorized routes in National Forest lands, the Travel Rule (36 C.F.R. parts 212, 251, 261, and 295) requires a balanced consideration to resource protection, recreational needs, safety, and other pertinent issues.

As the adjacent property owner who provides direct access from Wildridge Road East to trail #7-779.1 via the 5.7 acre tract of open space (Tract I), the TOA is willing to discuss improvements and maintenance to its open space property connecting to the USFS access point. It is important to view the ROD on this particular road in light of the TOA’s recent commitment to both maintain and provide additional management opportunities to this area. The commitment is evidenced by the 2011 budgetary commitment to improve drainage and access within Tract I.

The TOA’s concern is not merely procedural. Rather, we worry that the agency has prematurely precluded an adequate range of alternatives from being considered for this specific route. Because the alternatives analysis is the “heart” of NEPA, the agency must study all alternatives that appear reasonable and appropriate, and must also look into other alternatives called to its attention by the public during the comment period.

III. Request for Relief

TOA respectfully requests that the ROD be remanded to the WRNF local office to analyze #7-779.1, to examine our comment and the recreational value of this route in further detail. This includes the possibility that this route could be changed to reflect the additional information. TOA urges the USFS to consider #7-779.1 as a system route, including the possibility of motorized use, according to a combination of the following options and comments:

- a. Access improvements to the road connecting Wildridge Road East to the USFS boundary, including drainage improvements, will be completed by TOA to the local district’s satisfaction in the 2011 calendar year.
- b. Gate will be installed at Wildridge Road East by the TOA in order to restrict vehicle access during wet months, as recommended by the USFS.

- c. Route will remain open due to the direct access it provides to fire response personnel in the instance of wild land forest fires, and/or local fire mitigation efforts. We believe this principle is even more relevant given forest health issues and the Pine Beetle impacts to our region.
- d. Strong public support for #7-779.1 has been expressed by area residents to the TOA Council since the ROD was published.
- e. We are concerned that decommissioning too many forest system routes may result in disregard for trail rules for the forest and more prevalent and widespread environmental damage to the ecosystem. With that in mind, please know that TOA will cooperate fully to achieve your final determination on this trail that runs on both USFS and TOA property.

IV. Conclusion

TOA wishes to reiterate our support of the Forest Service's overall White River National Forest Travel Management Plan. Given the complexity of the issues and time and resources committed to this document, we believe that its overall quality should be highlighted and commended. For the reasons stated above, TOA respectfully requests the Forest Service appeal Reviewing Officer to make the specific change sought in this appeal.

Respectfully submitted this 20th day of June, 2011.

Sincerely,



Rich Carroll
Mayor



Town of Avon
PO Box 975
Avon, CO 81620
(970)748.4000



United States
Department of
Agriculture

Forest
Service

Rocky
Mountain
Region

740 Simms Street
Golden, CO 80401
Voice: 303-275-5350
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File Code: 1570

Date: August 3, 2011

Rich Carroll
Mayor
Town of Avon
PO Box 975
Avon, CO 81620

Dear Mr. Carroll,

We received your June 20, 2011 appeal of Forest Supervisor Scott Fitzwilliams' March 17, 2011 Record of Decision for the White River National Forest Travel Management Plan. The legal notice initiating the appeal period for the decision was published in the Glenwood Springs Post Independent on May 4, 2011, and the appeal filing period closed on June 20, 2011. Your appeal was submitted in a timely fashion under the provisions of 36 CFR § 215.6 (a)(4).

On June 27, 2011 Town of Avon representatives and the White River National Forest officials held an informal disposition meeting to address the appeal filed by the Town of Avon in regard to the White River Travel Management Plan decision. The results of the meeting led to a signed negotiated resolution and formal withdrawal of the June 20, 2011 appeal on July 7, 2011.

I appreciate the time you took to discuss your concerns with Forest Supervisor Fitzwilliams and his staff. I believe this was a productive discussion and am very pleased that you were able to work with the White River National Forest personnel to resolve your concerns with the Travel Management project.

Based on your withdrawal letter I am dismissing your appeal without review (36 CFR § 215.16(a)(9)). This does not constitute a formal appeal disposition pursuant to 36 CFR § 215.18(c).

Sincerely,

/s/ Randall Karstaedt

RANDALL KARSTAEDT

Acting Deputy Regional Forester, Resources

cc: Wendy Haskins
Scott Fitzwilliams
Cindy Dean



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Appeal Number: 11-02-00-0044 (215)

Appellant: Rich Carroll, Town of Avon

Date Received: June 20, 2011

Decision: White River Travel Management Plan

Decision Maker: Forest Supervisor, Scott Fitzwilliams, White River National Forest

Negotiated Resolution: July 5, 2011

Town of Avon representatives and the White River National Forest officials through informal disposition agree:

- That the Town of Avon and the White River National Forest would seek to develop a Memorandum of Understanding (MOU) to address issues associated with FSR 7-779 (Metcalf Creek Road). This includes a commitment from the Town of Avon to address in the near term resource issues associated with parking and access to FSR 7-779.1 on Town of Avon lands; and in partnership with the Forest Service address long-term resource and social issues associated with the alignment and uses of this road.
- That based on the above commitment the White River National Forest would revise the decision to allow FSR 7-779 (Metcalf Creek Road) to remain open to licensed motor vehicles, bicycles, horse, and foot traffic.
- The Town of Avon would withdraw the appeal.
- Recognize the Forest Service reserves the right to decommission FSR 7-779 if the Town is unable to accomplish needed work on Town land in a reasonable timeframe, if agreement cannot be reached on the specifics of the MOU, or if specific actions identified in the MOU are not accomplished within a reasonable timeframe.

Forest Supervisor Scott Fitzwilliams commits:

To work with the Town of Avon to develop a Memorandum of Understanding (MOU) to address issues associated with FSR 7-779 (Metcalf Creek Road). That based on the commitment from both parties I will revise the decision to allow FSR 7-779 (Metcalf Creek Road) to remain open to licensed motor vehicles, bicycles, horse, and foot traffic.

Appellant Rich Carroll on behalf of the Town of Avon commits:

To work with the White River National Forest to develop a Memorandum of Understanding (MOU) to address issues associated with FSR 7-779 (Metcalf Creek

Road). Based on the commitment by the Forest Service stated above, I withdraw my appeal of the White River National Forest Travel Management Plan in its entirety.



SCOTT FITZWILLIAMS

Forest Supervisor, White River National Forest

7/5/11
Date



Rich Carroll

Town of Avon

7/7/2011
Date